IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 709 OF 2005

Sanjay Baburao Dhende ... Appellant

V/s

Smt. Shevantabai Narayan Alhat & ors. ... Respondents

Mr. R.V. Govilkar for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 19TH SEPT., 2005

P.C.:

1. The appellants have filed this appeal against the judgment and order passed by the District Judge, Pune, dated 11.4.2005 allowing the appeal and setting aside the judgment and order passed by the Civil Judge, S.D., Pune, in Special Civil Suit No. 1658 of 1997 dismissing the plaintiffs' suit for possession of the suit premises.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiffs filed the suit for a decree against

the defendant for recovery of vacant possession of the suit flat and also for recovery of damages at the rate of Rs.500/- p.m. from the date of filing of the suit till getting possession of the suit flat by them. Initially, the suit was filed by the plaintiff Narayan Sadashiv Alhat. However, his legal heirs were brought on record during pendency of the suit. The property is self contained block bearing No.34/267 located at Phulenagar, Yerwada, Pune, admeasuring 200 sq.ft. The Maharashtra Housing Area Development Authority (in short MHADA) had allotted the suit flat to plaintiffs in 1976 under S.I.H.S. Housing Scheme as per the letter dated 14.9.1976. Since then the plaintiff is in occupation and possession of the suit flat. Plaintiff's name was accordingly recorded as allottee in respect of suit flat in the record of MHADA. Plaintiffs also came with the case that deceased plaintiff allowed the defendant to use the suit flat for short period considering the cordial relations between them as the defendant was in dire need of accommodation. The suit flat was used by the defendant at free of rent or any charges since 1987, however, the defendant with a view to usurp the suit flat started making application to the M.S.E.B. for transferring electric meter in the name of himself and without consent of plaintiffs and also had gone to the

extent of making an application to MHADA for transferring the suit flat in his name and also filed case against the plaintiffs for no reason whatsoever with the police. It is the case of the plaintiffs that the defendant has occupied the flat as a gratituous licensee and defendant had failed and neglected to vacate the suit flat and hence the legal notice was issued dated 6.7.1992 to the defendant to vacate the premises but in vain. Hence the suit.

4. Defendant contested the suit and denied all the allegations. It is the case of the defendant that, on 5.9.1976 the suit flat was allotted to the plaintiff on tenancy basis. However, even after the allotment, the plaintiffs, at no point of time had occupied the suit premises in the capacity of tenant and he was gratituous licensee. It is further contention of the defendant that, after terminating the tenancy of the plaintiffs, he has become allottee of the suit flat by virtue of the Govt. Resolution No.S.C.S.2885/C.R./1021/Mantralaya, Mumbai, dated 18.5.1987 and, as such, the suit is liable to be dismissed.

5. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion on the basis of

available evidence that the plaintiffs' suit deserves to be dismissed on the ground that the plaintiffs failed to prove that defendant was unlawfully occupying the said premises. It was further held that the defendant had proved that plaintiffs' tenancy was terminated by MHADA and as per the Govt. Resolution No.SCS 2885/C.R.1021/Mantralaya, dated 18.5.1987, the defendant had become owner of the suit premises and, as such, the suit came to be dismissed.

The appeal was carried to the District Court at Pune. The learned District Judge, after hearing both sides, allowed the appeal and decreed the suit. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. It is not in dispute that the suit flat was initially allotted in the name of the plaintiffs and it is also an admitted as well as evident position that the defendant is gratituous licensee in the suit premises. The only contention sought to be raised on behalf of the appellant is that the tenancy of the plaintiffs is terminated by MHADA and thereafter by virtue of the provision of the above noted G.R. of the

year 1987 he has become owner/occupier of the suit flat. In this connection, it must be noted that though the plaintiffs' tenancy was terminated in the year 1989 by MHADA, however, even after termination of such tenancy, the rent was accepted from the deceased plaintiff by MHADA, which showed that tenancy has been continued by MHADA even after the notice of termination and, therefore, the lower appellate Court has rightly invoked the provision of Sec.66 of the MHADA Act, 1976 in order to hold that the tenancy is not terminated. It is also to be noted that, Sec. 65 of the MHADA Act has made a provision for appointment of the competent authority and it is obvious from the plain reading of the said provision that the competent authority has to pass an order of eviction against the allottee of the tenement of MHADA. Mere service of termination of tenancy is not enough. The case has to be referred to the competent authority for seeking the eviction order. In the present case, there is nothing on record to show that although the notice of termination of tenancy was served upon the plaintiffs, the case was referred to the competent authority for order of eviction. In view of this factual matrix, it cannot be said that the plaintiffs' right was extinguished merely because termination notice was issued to them.

7. In view of this position, the learned lower appellate Court has rightly held that the plaintiffs continue to be the tenant of the suit flat. The defendant who has come over to the suit property through the plaintiffs has denied his title and hence it is obvious that the plaintiffs are certainly entitled to claim his eviction from the suit flat. Under the circumstances, the suit came to be decreed. In my view, the reasoned order passed by the learned District Judge is just, legal and proper and, therefore, it would brook no interference.

In the result, the appeal stands dismissed.

Consequently, Civil Application No. 1202 of 2005 also stands dismissed.

8. At this stage, the learned counsel for the appellant prayed for stay of the order. In view of the facts and circumstances, the order stands stayed for a period of six weeks.

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